



# HUMAN RIGHTS REPORT

## Kentucky Commission on Human Rights Quarterly Newsletter

Fall 2004

### Kentucky Supreme Court rules in favor of KCHR to investigate Pendennis and other private clubs for discrimination

The Kentucky Commission on Human Rights (KCHR) has won a major victory in a court test of whether it has the power to investigate private clubs for discriminatory membership practices.

On November 18, the Kentucky Supreme Court declared KCHR does have statutory authority to investigate private clubs for this purpose. If prohibited discriminatory conduct is found, the court said, club members will be disallowed from deducting club payments on their state taxes.

KCHR asserts that the Pendennis Club of Louisville, Louisville Country Club, and Idle Hour Country Club of Lexington, the three clubs named in the case, must now open their membership records to KCHR for investigation.

"All private clubs in Kentucky should sit up and take notice that the Kentucky Revenue Cabinet will deny business expense deductions regarding payments to private clubs that are found by the commission to discriminate on the basis of race, color, religion, national origin or sex," said Morgan G. Ransdell, acting executive director for KCHR.

Director Ransdell was co-counsel in the private clubs case along with Kentucky Assistant Attorney General Brent Irvin, who presented the case on behalf of KCHR.

Commenting on the court victory, Mr. Irvin said: "This is a great decision to advance civil rights in Kentucky. The Supreme Court's opinion should encourage private clubs to eliminate racial restrictions on membership or in the use of their facilities and thus advance Rev. Martin Luther King's dream

that one day in America people will be judged by the content of their character and not by the color of their skin."

The high court's decision reversed a series of lower court rulings and marks the successful end to a 13-year legal battle for KCHR. There is no appeal from statutory construction decisions of the Kentucky Supreme Court.

The commission has long had jurisdiction to investigate places of public accommodation for discrimination, but private clubs are specifically exempt from being classified as a public accommodation in the Kentucky Civil Rights Act, Kentucky Revised Statute (KRS) 344.130.

In a 7-0 opinion, Chief Justice Joseph Lambert wrote that KCHR's authority with regard to the clubs rests in another state statute, KRS 141.010(11)(d), part of 1990 amendments in Kentucky's state tax code.

The amendments prohibit taxpayers from taking: "[a]ny deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex."

Otherwise, under state law, members of private clubs can deduct as business expenses at least a portion of payments made to their clubs for meals, entertainment and use of the club's

facility.

Attorneys for the three prestigious clubs argued that KCHR was not specifically named in KRS 141 as the "agency" charged with enforcing the civil rights laws of Kentucky. However, the Supreme Court said the General Assembly's intention is clear and the commission's investigatory powers, though not explicitly created, exist by implication in the statute.

"Thirteen years ago the Kentucky General Assembly resolved that members of discriminatory clubs should have no sanctuary in the tax code," the chief justice wrote. "This court has now clarified KCHR authority to progress toward fulfillment of that public policy."

Furthermore, "KCHR can investigate any club – public, quasi-public, or private – to determine whether it denies full and equal enjoyment of its membership and benefits on account of race," Chief Justice Lambert wrote.

In addition to race, the decision authorizes the commission to investigate clubs with regard to the other protected classes listed in the amendments. However, there is a proviso that these sections of the revenue code don't apply to deny deductions for amounts paid to "any religious or denominational group or establishment or organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established or maintained."

The case originated in 1991 when

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Morgan Ransdell  
Acting Executive Director

## Kentucky Supreme Court continued

Louisville civil rights activist Rev. Louis Coleman filed complaints with KCHR, alleging membership practices at the three clubs were racially discriminatory. The commission dismissed the complaints, reasoning that the clubs were exempt from KRS 344. One month later, then State Rep. Anne Northup (now a U.S. representative), and a sponsor of the 1990 tax code amendments, asked the Attorney General's Office for an opinion. The opinion said the commission was not barred from investigating private clubs, although the clubs could not be held liable for damages under KRS 344. Two years later, then Commissioner Mae Cleveland filed complaints on behalf of KCHR alleging unlawful discrimination by the clubs. The clubs challenged the commission's authority to investigate the Cleveland complaints, and won in two lower courts. The Supreme Court decision reversed the rulings and sent the case back to Jefferson County Circuit Court for further proceedings.

Director Ransdell said KCHR would now push for the clubs to turn over the racial and gender makeup of their memberships. The clubs have been unwilling to provide the information, he

said.

Chief Justice Lambert wrote that the case was not about the rights of clubs or their members. He said that Kentucky private clubs do have the statutory right to discriminate in affording benefits of membership.

He said that private clubs must comply with The Kentucky Civil Rights Act when it comes to employment, however: "For example, while a private club that racially discriminates in affording full and equal enjoyment of its benefits may not be held liable for damages, a private club with eight or more employees could be civilly liable if it discriminated on the basis of race in its employment practices. In such a situation the KCHR would have authority to exercise its power under KRS 344.180 and KRS 344.190 [sections on employment], and the club would be held accountable for its iniquitous employment practices," the chief justice wrote.

The court said the opinion did not deal with whether the three named clubs had been discriminatory, noting that no evidence had yet been heard and that it is unknown whether the clubs discriminate in membership practices.

## Announcing the call for nominations to the 2005 Kentucky Civil Rights Hall of Fame

The Kentucky Commission on Human Rights is now accepting nominations until Friday, March 18, 2005, for the Kentucky Civil Rights Hall of Fame 2005.

The commission invites the people of Kentucky to place their nominations for individuals they would like to see honored for making important contributions to civil rights in the commonwealth.

An independent panel of judges from throughout the state will select the new inductees from the nominations placed by the public. Inductions will be held at a special celebration planned for July 2005.

This will be the fourth set of inductions since the commission established the Hall of Fame during the state government agency's 40<sup>th</sup> anniversary celebration in 2000.

Eligible nominees are people who have:

1. Provided exemplary leadership and achievement toward Kentucky's progress in the areas of civil rights; Their efforts may pertain to civil rights regarding race, color, national origin, sex, religion, disability, age and familial status - all of which are protected classes covered in the Kentucky Civil Rights Act;

2. Advocated for civil rights through actions and deeds in Kentucky;

3. And, served as role models and beacons in the struggle to eliminate discrimination, prejudice and barriers of equality in Kentucky.

4. Also, nominated candidates may be either living or deceased; their contributions may cover a wide range of civil rights issues in present or past eras.

5. A past nominee who has not been inducted may be nominated again based on the above criteria.

The Kentucky Civil Rights Hall of Fame serves as a high honor for brave men and women who have been leaders in the struggle for equality and justice on many battlegrounds and have made Kentucky a better place to live.

Nomination forms are free and available to the public by calling the Kentucky Commission on Human Rights at 502.595.4024 in Louisville or 1.800.292.5566 (Ask for Cynthia Fox). The form is also available at the commission's website, <http://kchr.ky.gov>. The form can be completed and submitted online.

# Mayfield artist named 38th Great Black Kentuckian



**R**enowned folk artist Helen LaFrance is the 38<sup>th</sup> member of the Gallery of Great Black Kentuckians, the educational poster and bookmark series produced

by the Kentucky Commission on Human Rights.

Ms. LaFrance helped our agency to unveil her poster at a special public ceremony on Nov. 5, at the LaFrance Art Gallery, 105 West Broadway, in Mayfield, Ky. The Mayfield Human Rights Commission hosted a light reception and Ms. LaFrance was on hand to autograph free posters. The event was attended by 50 people.

"We are honored to place Helen LaFrance into our historical gallery," said Morgan G. Ransdell, KCHR acting executive director, "She is a testament to excellence and commitment."

Born in 1919 in Graves County, the artist has been painting since she was 5 years old. She received no formal art instruction nor did she attend high school, she says. It was her mother who inspired the child. "She placed a pencil in my hand and instructed me to paint

what I saw," said Ms. LaFrance, "then she would gently guide my hand across the paper."

The girl's first work was a large gray rabbit, which she painted on the back of a leftover piece of wallpaper, using watercolors given to her by an aunt. Later Helen's mother kept her supplied in paints by blending laundry bluing with dandelions and berries.

The artist uses the "Memory Painting" folk art style, recording her autobiography in colorful images. For over 70 years, she has painted her memories of Western Kentucky rural life from a now bygone era – these are Southern scenes – farmers plowing in the field, church picnics, cotton fields, river baptisms. Her signature piece, "Church Picnic," is of a time in her life that is dear to her, she says.

Her art has been on exhibit in galleries in Richmond, Ky., Columbus, Ga., and St. Louis, Mo. Her biography is listed in *Outsider Art Of The South*, an art reference book by Kathy Moses.

Of her talent, Ms. LaFrance speaks with modesty: "I just do what I do. I thought if I kept doing it, one day I'd do something worthwhile." Her gallery is located in the historic downtown district of Mayfield.

The commission introduced the Gallery series in 1970, to recognize the

achievements of African Americans neglected in traditional histories of the state and to introduce Kentucky African American history into classrooms. The posters help the commission in its task to raise awareness of human and civil rights in the commonwealth.

Educators and libraries use the colorful, biographical-style posters as teaching tools. Posters and bookmarks are available to the public.



Mayor Arthur Byrn attended and presented Ms. LaFrance with a key to the City of Mayfield.

## Save the Date! MLK Awards on January 21

Please join us for our annual Martin Luther King Day Celebration and Community Youth and Adult Leadership Awards on Friday, January 21, 2005 from 1 to 3 p.m., in the Floyd Theatre, which is on the third floor of the University of Louisville Student Activities Center, located at 2100 South Floyd Street.

The keynote speaker will be Prof. Herman Daniel Farrell III, who is a Centre College Humana Visiting Professor in Danville, Ky. He was commissioned by the school to write a play for the DramaCentre, *The Beloved*

Community, which was premiered in November 2003. Scenes from his HBO screenplay "Boycott," will be shown during the MLK program. A native of New York, he has written more than 30 plays, and explores the legacy of the civil rights movement in much of his work. He received an M.F.A. in playwriting from Columbia University, a J.D. from the New York University law school, and a B.A. cum laude in drama from Vassar College.

Mr. Farrell also serves as a commissioner on the Midway-Versailles-Woodford County Human Rights Commission.

# Partners Page

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## Local Commissions News

**The Ashland Human Rights Commission**, which has spent 2004 celebrating its 25<sup>th</sup> anniversary, organized a community forum in October for local politicians to meet the public. Ashland held a similar forum two years ago. Carol Jackson, the chair of the Ashland Human Rights Commission, has recently been named a vice-president of the Boyd and Greenup Counties NAACP. Ann Newman, the president of the Boyd and Greenup Counties NAACP, continues being a member of the Ashland Human Rights Commission.

**The Covington Human Rights Commission** has completed a video outlining the rights and responsibilities of residents, homeowners and landlords regarding fair housing. The video was produced by Covington Human Rights Commissioner Pamela Mullins and features Covington Human Rights Chair, Rev. Donald Smith, speaking about housing and other human rights. The video is airing on local access cable television in Northern Kentucky. The Covington Human Rights Commission is also working with Northern Kentucky FBI agents and local prosecutors on a proposal to enhance the state hate crime law. The current law in Kentucky is used to determine whether someone convicted of a hate crime should receive probation or parole, but does not add separate penalties.

**The Danville-Boyle County Human Rights Commission** is organizing a workshop for local police and others who are interested in improving community relations. Georgia Tompkins, the chair of the Danville-Boyle County Human Rights Commission, called for the workshop earlier this year after a black man from Danville complained that police beat him after his arrest. Police said in news reports that they did nothing wrong. However, Ms. Tompkins and other human rights commissioners have said the incident shows a need for sensitivity training and hope to have the workshop completed soon.

The new chair of the **Lexington-Fayette Urban County Human Rights Commission** is Gloria Rie, who will assume office in January 2005. The new vice-chair is Andrea Coleman. The Lexington-Fayette Human Rights Commission helped the Lexington NAACP produce the state NAACP conference in Lexington in October and will be putting together a special housing conference in Lexington during April 2005.

Ron Rose, a longtime member of the **Midway-Versailles-Woodford County Human Rights Commission**, has recently resigned. He was praised for his service by Rev. Ken Golphin, the chair of the Midway-Versailles Woodford County Human Rights Commission.

**The Richmond Human Rights Commission** helped organize a series of community meetings in August to improve police and community relations in the wake of the

arrests of seven blacks in May 2004. The Richmond Human Rights Commission in August issued a report calling for the city to hire a consultant to assess polices and procedures for police and other departments to ensure that everyone is treated fairly. The report also called on the city to recruit more minority officers. City officials have said they would comply with the report's recommendations.

In August, KCHR conducted the semi-annual Local Commission Statewide Roundtable. **The Owensboro Human Relations Commission** hosted the Roundtable and hosted the August meeting of the KCHR commissioners. Representatives of local commissions from Owensboro, Paducah, Hopkinsville, Bowling Green, Henderson, Lexington, Covington, Richmond and Midway-Versailles-Woodford County attended the meeting. Presenters included KCHR Staff and Marcia Hall-Craig, director of the U.S. Equal Employment Opportunity Commission Louisville Office. The Owensboro Human Relations Commission hosted its annual banquet on September 16. The commission recently revived its Community Conversation Circles on issues of race and diversity.

An ordinance was passed in July in Lebanon, Ky., creating **The Lebanon Human Rights Commission**. There are currently nine members. KCHR conducted for the group new commissioner orientation and training on KRS 344, The Kentucky Civil Rights Act. KCHR Commissioner Ann Darragh attended a training and meeting of the Lebanon Commission in September.

**The Mayfield Human Rights Commission** recently hosted the unveiling of the 38<sup>th</sup> poster in the KCHR Gallery of Great Black Kentuckians series. Recently, two new members were appointed to the Mayfield Commission.

**The Louisville and Jefferson County Metro Human Relations Commission** hosted a viewing and discussion of the "Two Towns of Jasper" documentary. The commission will be conducting its annual Race Relations Conference on January 27 at the Galt House in Louisville. Contact Kellie Watson, executive director at 502.574.3631 for information.

**The Bowling Green Human Rights Commission** partnered with KCHR on October 2 to host the "Keepers of the Dream" Fair Housing Information Fair. KCHR's Juan Pena worked with Bowling Green on this effort. The Bowling Green Commission hosted the annual Race & Equality Week, which began on Monday, October 18. The commission sponsored events throughout the week like the Local Candidates Political Forum in partnership with the Housing Authority of Bowling Green, the local branch of the NAACP, and the Western Kentucky University Department of African American Studies. Bowling Green Mayor Sandy Jones and County Magistrate Cedric Burnam attended the event.

# Town Forum looked toward the future

More than 60 people attended a lively panel discussion at the 10th Annual Kentucky Commission on Human Rights Town Forum on Oct. 29, at the Hyatt Regency Hotel in Louisville.

The theme of the two-hour program was "Human Rights: Where Do We Go From Here?" The panelists were Gilberto Esparza, director of the Hispanic Resource Center in Covington; Judge Nathaniel Jones of Cincinnati, Ohio, who is retired from the U.S. Court of Appeals; Mardi Montgomery, deputy secretary of the Kentucky Education Cabinet; Kentucky State Sen. Gerald Neal of Louisville and Beverly Watts, the executive director of the National Fair Housing Training Academy in Washington, D.C. and immediate past executive director of KCHR.

Jean West, a news anchor at WHAS TV in Louisville, served as moderator.

The event was co-sponsored by the Louisville Defender newspaper and the panel exchanged thoughts on a variety of topics, including the 50<sup>th</sup> anniversary of the Brown v. Board of Education decision that struck down segregation in public schools; the appointment of federal judges; voting rights for former inmates

and the future of the civil rights movement.

Judge Jones, who served on the Kerner Commission, which studied urban problems during the 1960s and predicted that America was becoming "two societies, separate and unequal," said equal opportunities for minorities have eroded since Brown was decided in 1954.

"We are holding on to race now by our fingertips," Judge Jones said.

Esparza said Kentucky has only 108 certified Spanish-language interpreters for the judicial system, not enough for a state with 120 counties. He said Kentucky schools should include more curriculum for Hispanic students.

"My hope is that our school systems embrace our Latino students as our population grows," Mr. Esparza said.

Ms. Montgomery said the state wants more minority students to be enrolled in advanced courses and she asked residents to help their local schools.

Sen. Neal, who has introduced legislation to close the education gap, said, "we can close the achievement gap if we are determined to do it." He called on state and federal officials to ensure

each student in public schools has a good education.

An audience member asked the panel about Gov. Ernie Fletcher's plan to require convicted felons to put in writing their reasons for wanting to regain their voting rights. Mr. Esparza, whose family has been victimized by crime, said he didn't have a problem with Gov. Fletcher's new requirement.

But Judge Jones said he didn't think felons who had completed their sentences should face additional obstacles in having their voting rights restored.

"The new felon (requirement) is very troubling and should be challenged," Jones said.

Ms. Watts said she is concerned that the education gap for minority students is causing additional problems for society. "I am concerned about the wealth gap," she said. "We have poverty and we have race and we have prison growth. Go into any prison and you will find people who have been denied equal access to education."

She said many Americans also lack health care and she urged those in attendance to fight for human rights.

## Commission Rulings

KCHR approved three conciliation agreements during its October meeting at Louisville headquarters. Conciliation agreements are reached through KCHR negotiations between complainants and respondents in consideration for the full and complete resolution of all claims of alleged discrimination. The agreements do not represent an admission by any of the respondents of violations of the law and furthermore the respondents denied any violations of the law.

In other business, the commission dismissed 17 complaints, which, after investigation, resulted in findings of no probable cause. The commission accepted two complaint withdrawals without settlement and brought two cases to administrative closure.

**Yolanda Nance Acosta v. James Wilson in Fancy Farm:** In a complaint alleging discrimination based on race in

housing, in violation of the Kentucky Civil Rights Act, KRS 344.360, and after a finding of probable cause, a conciliation agreement was reached and included compensation by the respondent to the complainant in the amount of \$4,000. The respondent agreed to undergo and show proof of Fair Housing compliance training, and to provide literature about the right to fair housing to all prospective clients.

**Arthur Crosby v. Robert Dickman in Fort Mitchell:** In a complaint alleging discrimination based on familial status in housing, in violation of KRS 344.360, a conciliation agreement was reached and included compensation by the respondent to the complainant in the amount of \$5,000. The respondent agreed to undergo Fair Housing compliance training, provide literature about the right to Fair Housing to all prospective clients, and to submit to commission monitoring with regard to compliance for two

years.

**Diana Napper v. MA & CFM Enterprises Inc. in Louisville:** In a complaint alleging discrimination based on disability in employment, in violation of KRS 344.040, a conciliation agreement was reached and included a pay raise by the respondent to the complainant in the amount of 10 cents per hour for the pay period ending July 25, 2004. The respondent agreed to redefine the complainant's job duties in order to meet the reasonable accommodation requirement for her disability, and in that context, to file a positive performance evaluation for the period of February through July 2004. The respondent agreed to provide interpreters for other deaf or hard-of-hearing employees when necessary for effective communication. The respondent agreed to provide civil rights compliance training for employees and to submit to commission compliance monitoring.

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# **HUMAN RIGHTS REPORT**

*KCHR is the state agency that enforces The Kentucky Civil Rights Act. It receives, initiates, investigates, conciliates and rules upon jurisdictional complaints. KCHR has jurisdiction in housing, employment, public accommodations, financial transactions and private clubs. The Kentucky Civil Rights Act prohibits discrimination on the basis of race, color, religion, national origin, sex, familial status in housing, disability, age (40 or over) in employment, and smoking status in employment. Complaints not dismissed, settled or conciliated go to administrative hearing where commission decisions have the authority of a court of law.*

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